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## PPP Legislation


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ANALYSIS FOR STATE OF MINNESOTA

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### Statute:

MINN. STAT. ANN. §§ 160.84 – 160.93

### Summary:

Authorizes solicited and unsolicited PPPs for toll facilities. Authorizes HOT lanes.

### Key Elements of Minnesota's PPP Enabling Legislation

Last Updated: September 2005

No.	Issue:	Short Answer:	Sample Provision:
1.	Does the relevant law allow solicited and unsolicited proposals for PPP projects?	Yes.	§160.85 authorizes solicitation or acceptance of proposals for toll facilities.
2.	Does the relevant law permit local/state/federal funds to be combined with private sector funds on a PPP project?	No express provision.	
3.	Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?	Private operator, subject to terms of development agreement.	§160.86 (f) development agreement must establish a reasonable rate of return on investment.
4.	Does the relevant law permit TIFIA loans to be used on PPP projects?	No express provision.	
5.	Is the number of PPP projects limited to only a few "pilot" or "demonstration" projects?	No.	
6.	Are there restrictions concerning the geographic location of PPP projects?	No.	
7.	Are there restrictions concerning the particular mode of transportation eligible to be developed as a PPP project (e.g., truck, passenger auto, freight rail, passenger rail)?	Yes.	Limited to toll facilities defined in §160.84, Subd 9 as bridge, causeway, tunnel, road, street or highway or appurtenant building, structure.
8.	Is there a legal requirement to remove tolls after the repayment of project debt?	No.	§160.87, Subd 3 After expiration of a lease, road authority may continue to charge tolls for the facility.
9.	Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?	In part.	§160.93 permits HOV lanes to be converted to HOT lanes.
10.	Is there a restriction that prevents the revenues from PPP projects from being diverted to the state's general fund or for other unrelated uses?	No.	
11.	Is prior legislative approval required when an individual PPP proposal is received?	No.	

12.	Are there any similar requirements that subject the PPP proposal or the negotiated PPP agreement to a local veto?	Yes.	§160.85, Subd. 3 provides that the governing body of a county or municipality through which a facility passes may veto the project within 30 days of approval by the commissioner.
13.	Does the relevant law permit all kinds of procurements for PPP project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?	No express provision.	Note that there is express design-build legislation under Minn. Stat. §§161.3410 to 161.3428.
14.	Are there explicit exemptions/ supplemental procurement authority from the application of the state's general procurement laws?		
15.	Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?	Yes.	§160.85, Subd. 4.
16.	Does the public sector have the authority to issue toll revenue bonds or notes?	Yes.	§160.89 permits commissioner of finance or road authority to issue revenue bonds.
17.	Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?	No express provision.	
18.	Does the relevant public agency have the authority to hire its own technical and legal consultants?	No express provision.	
19.	Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?	No express provision.	
20.	Can the agency charge application fees to offset its proposal review costs?	No express provision.	
21.	Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).	No provision.	
22.	Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?	No.	
23.	Are there any non-compete clause prohibitions?	No.	

24.	Is the authority to enter into PPPs restricted to the state DOT or state turnpike authority or may regional or local entities also do so?	No.	§160.84, Subd. 8 defines "road authority" as provided in §160.02, Subd. 25 which defines as the commissioner, as to trunk highways; the county board, as to county state-aid highways and county highways; the town board, as to town roads; and the governing bodies of cities when the governing bodies or city streets are specifically mentioned. Also includes joint powers authority of two or more road authorities.
25.	Does the relevant law specify evaluation criteria for PPP proposals received under a given procurement approach?	No.	
26.	Does the relevant law specify the structure and participants for the review process involving PPP proposals?	No.	
27.	Does the relevant law protect the confidentiality of PPP proposals and any related negotiations in the period prior to execution of the PPP agreement?	No express provision.	The Minnesota Government Data Practices Act may allow protection until completion of the evaluation process (see Minn. Stat. §13.591).
28.	Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?	Yes.	§160.85 Subd. 4(a) includes operation of toll facility under management contract.

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